

Nicholas J. Henderson, OSB #074027  
nhenderson@portlaw.com  
MOTSCHENBACHER & BLATTNER, LLP  
117 SW Taylor St., Suite 300  
Portland, OR 97204  
Telephone: (503) 417-0508  
Facsimile: (503) 417-0528

Proposed Attorneys for Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

CHRISTIAN S. RADABAUGH, SR.

Debtor-in-Possession.

Bankruptcy Case No. 18-34244-pcm11

DEBTOR'S EMERGENCY MOTION FOR  
AUTHORITY TO SELL ASSETS  
OUTSIDE THE ORDINARY COURSE OF  
BUSINESS

**(Expedited Hearing Requested)**

Pursuant to 11 USC §§ 105(a) and 363, Debtor-in-Possession, Christian S. Radabaugh Sr. (“Debtor”) moves this Court for entry of an order, on an emergency basis, approving the sale of certain of the Debtor’s assets outside the ordinary course of business. This motion is supported by the Declaration of Christian S. Radabaugh Sr. (the “Radabaugh Decl.”), filed herewith. In further support of this motion, Debtor represents as follows:

**JURISDICTION**

1. The United States Bankruptcy Court for the District of Oregon (the “Bankruptcy Court”) has jurisdiction over the above-captioned bankruptcy case and this motion pursuant to 28 U.S.C. §§ 157 and 1334.

2. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and venue of this case and this motion is proper under 28 U.S.C. §§ 1408 and 1409.

## **BACKGROUND**

3. Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on December 7, 2018, in the United States Bankruptcy Court for the District of Oregon (the “Bankruptcy Court”).

4. Debtor remains in possession of his assets and continues to manage his affairs as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

5. Debtor is an individual residing in Redmond, Oregon. Debtor is in the business of, among other things, raising livestock for sale.

6. Debtor’s livestock is encumbered by a security interest granted to GP, LLC, which was perfected on April 13, 2017, by the filing of a Farm Products Financing Statement Standard Form, EFS-1 No. 91156751 and a UCC-1 Financing Statement filed on April 13, 2017, No. 91156100.

7. As of the date of the petition, the Debtor owes GP, LLC approximately two million dollars (\$2,000,000). The exact amount Debtor owes to GP can be determined by reference to that certain judgment and money award entered against Debtor and in favor of GP, LLC in Crook County Circuit Court Case No. 18CV52765. Interest continues to accrue on the judgment at the rate of 10 percent per annum.

8. During the two-week period prior to the filing of the petition, at the request of GP, LLC, Debtor agreed to sell approximately 542 head of cattle through a video auction conducted by Shasta Livestock Auction Yard in Cottonwood, California. The video auction was conducted, and agreements were reached to sell the cattle to buyers, for agreed-upon prices. Pursuant to these

agreements, Debtor is to deliver the 542 head of cattle on Tuesday, December 11<sup>th</sup>, and Wednesday, December 12<sup>th</sup>, 2018. Radabaugh Decl., ¶ 4.

9. Additionally, just prior to the filing of the petition, Debtor agreed to let GP, LLC remove 305 head of cattle, primarily mother cows, and ship such livestock to the Shasta Livestock Auction Yard for sale. The cattle are scheduled to be sold on Friday, December 14, 2018. Radabaugh Decl., ¶ 5.

10. The majority of the proceeds would be used to pay GP, LLC, to reduce the amount of the judgment against the Debtor.

11. In order to deliver the cattle that is due for delivery today, the Debtor arranged for trucks to pick up the cattle beginning this morning, and for an Oregon brand inspector to inspect the brands to permit transit. Trucks and brand inspections have also been made for the delivery of cattle that is due to be delivered tomorrow. These arrangements were made prior to filing chapter 11 and would be costly to the estate and disruptive the sale process to stop. Radabaugh Decl., ¶ 6.

12. The Debtor's credibility as a seller of livestock would be impaired if he fails to complete timely delivery of the livestock as it had agreed to do. Radabaugh Decl., ¶ 7.

13. Furthermore, if the Debtor fails to deliver the livestock as he is required to do, it would incur substantial additional costs for feed and care of the livestock. The Debtor does not have consent or a court order to use cash collateral and in any event, has very limited funds available. Radabaugh Decl., ¶ 8.

14. With respect to the cattle scheduled to be sold on Friday, if that sale does not occur, then the Debtor will incur additional costs (with limited funds available) for feed, care, and storage of the cattle at Shasta Livestock that can be avoided by the proposed sale. Radabaugh Decl., ¶ 9

15. The sale at Shasta Livestock was an arm-length transaction and was conducted by Shasta Livestock. The purchaser is not related to the Debtor or any of its principals. Radabaugh Decl., ¶ 10.

16. The sale at Shasta Livestock scheduled for Friday December 14, 2018 will be an arms-length transaction and will be conducted by Shasta Livestock. Radabaugh Decl., ¶ 11.

### **RELIEF REQUESTED**

17. The relief requested herein by Debtor is based on the Court's authority pursuant to 11 USC § 105(a) and 11 USC § 363.

18. Debtor requests entry of an order in the form attached hereto as **Exhibit 1**, authorizing the delivery to the buyer of the cattle sold prior to the petition, and authorizing the sale of the cattle that have been shipped to Shasta Livestock Auction Yard.

### **ARGUMENT**

19. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

20. The debtor must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

21. Debtor believes the auction process used by the Shasta Livestock Auction Yard is a reasonable process designed to obtain reasonable market value for livestock, and that the sale procedures used by the auction yard are standard for the cattle industry. Radabaugh Decl., ¶ 12. Debtor believes that the prices that will be obtained for the cattle are fair market prices. *Id.*

22. Debtor believes the sale of livestock will yield approximately \$850,000 to \$900,000, which will enable Debtor to significantly pay down the judgment owed to GP, LLC, and will provide Debtor with cash needed to pay for business and living expenses during the initial months of these bankruptcy proceedings. Radabaugh Decl., ¶ 13.<sup>1</sup> Payment of the debt owed to GP, LLC will significantly reduce the amount of interest that accrues on the debt each month. Additionally, without the cash that is expected to be generated from the cattle sales, Debtor does not believe he will have sufficient cash flow to operate his business and pay for living expenses. *Id.*

WHEREFORE, Debtor requests the Court enter the order attached hereto as **Exhibit 1**, authorizing the closing of the cattle sales that Debtor agreed to prior to the filing of the petition, and authorizing the sale of cattle scheduled for December 14, 2018.

DATED: December 11, 2018

MOTSCHENBACHER & BLATTNER LLP

By: s/Nicholas J. Henderson

Nicholas J. Henderson, OSB #074027

Proposed Attorneys for Debtor-in-Possession

Christian S. Radabaugh Sr.

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<sup>1</sup> At the time this Motion is filed, Debtor and GP, LLC are negotiating the terms of a stipulated cash collateral order that would enable the Debtor to use cash for personal and business expenses. Debtor expects to present a motion requesting authority to use cash collateral in the immediate future.

**EXHIBIT 1**  
**PROPOSED ORDER**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re  
CHRISTIAN S. RADABAUGH, SR.  
Debtor-in-Possession.

Bankruptcy Case No. 18-34244-pcm11

ORDER GRANTING DEBTOR'S  
EMERGENCY MOTION FOR  
AUTHORITY TO SELL ASSETS  
OUTSIDE THE ORDINARY COURSE OF  
BUSINESS

This matter came before the Court on Debtor's Emergency Motion for Authority to Sell Assets Outside the Ordinary Course of Business [ECF No. \_\_\_\_] (the "Motion"). The Court, having reviewed the Motion and the supporting declaration, and, having heard arguments of counsel, hereby ORDERS as follows:

1. Debtor's MOTION is GRANTED;
2. Debtor is authorized to deliver cattle to consummate the sales entered into through the Shasta Livestock Auction Yard prior to the filing of the Petition;

3. Debtor is authorized to sell cattle that have been transported to the Shasta Livestock Auction Yard for a sale scheduled for Friday, December 14, 2018; and
4. All proceeds from the sale shall be held pending further order of the Court.

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I certify that I have complied with the requirements of LBR 9021-1 (a)(2)(A).

Presented by:

Motschenbacher & Blattner LLP

/s/ Nicholas J. Henderson

Nicholas J. Henderson, OSB No. 074027  
Motschenbacher & Blattner LLP  
117 SW Taylor Street, Suite 300  
Portland, OR 97204  
Email: [nhenderson@portlaw.com](mailto:nhenderson@portlaw.com)  
Phone: (503) 417-0508

#### **PARTIES TO SERVE**

##### ECF Electronic Service:

- SARAH FLYNN    [sarah.flynn@usdoj.gov](mailto:sarah.flynn@usdoj.gov)
- NICHOLAS J HENDERSON    [nhenderson@portlaw.com](mailto:nhenderson@portlaw.com), [tsexton@portlaw.com](mailto:tsexton@portlaw.com);  
[mperry@portlaw.com](mailto:mperry@portlaw.com)
- US Trustee, Portland    [USTPRegion18.PL. ECF@usdoj.gov](mailto:USTPRegion18.PL. ECF@usdoj.gov)

##### Service via First-Class Mail:

Howard Levine  
Sussman Shank LLP  
1000 SW Broadway, Suite 1400  
Portland, OR 97205